

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Diana Arreaga	Team: Squad #6	CCRB Case #: 201610067	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 09/02/2016 9:50 PM	Location of Incident: Union Avenue and East 156th Street; 40th Precinct stationhouse	Precinct: 40	18 Mo. SOL 3/2/2018	EO SOL 3/2/2018	
Date/Time CV Reported Wed, 12/07/2016 1:32 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 12/07/2016 1:32 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Malik Mccloud	30082	954114	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT John Ferrara	01746	925280	040 PCT
2. POM Randy Henriquez	08570	952842	040 PCT
3. POM Michael Nesto	03785	954173	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Malik Mccloud	Abuse: At Union Avenue and East 156th Street, Police Officer Malik McCloud stopped § 87(2)(b)	
B.POM Malik Mccloud	Abuse: At the 40th Precinct stationhouse, Police Officer Malik McCloud strip-searched § 87(2)(b)	

Case Summary

On December 7, 2016, § 87(2)(b) filed this complaint with the Civilian Complaint Review Board (CCRB) via telephone.

On September 2, 2016, § 87(2)(b) was standing in front of 729 Union Avenue in the Bronx, because he owed an individual who resided in the building two dollars. The individual went inside of the building and told § 87(2)(b) that he would be back out to speak with him. § 87(2)(b) held two dollars in his hand and placed his hand through a gap of the gate in front of the building. § 87(2)(b)'s hand accidentally hit the gate causing the two dollars to fall out of his hand and onto the ground on the other side of the building. § 87(2)(b) proceeded to walk away when a marked police vehicle stopped in front of him. Four police officers from the 40th Precinct exited the vehicle and approached § 87(2)(b). Police Officer Malik McCloud of the 40th Precinct stopped § 87(2)(b) (**Allegation A**). After § 87(2)(b) could not provide photo identification, he was placed under arrest. A search of § 87(2)(b) resulted in the discovery of three bags of crack cocaine in his sweatpants pocket. § 87(2)(b) was transported to the 40th Precinct stationhouse.

At the 40th Precinct stationhouse, Police Officer McCloud allegedly strip-searched § 87(2)(b) (**Allegation B**). § 87(2)(b) was released on Desk Appearance Ticket § 87(2)(b) for criminal possession of a controlled substance (Board Review 01).

No video footage was obtained regarding this incident. This case was consulted with an APU attorney.

Mediation, Civil and Criminal Histories

- This case was ineligible to mediate due to § 87(2)(b)'s arrest.
- According to the NYC Comptroller's Office, as of February 2, 2017, § 87(2)(b) has not filed a Notice of Claim regarding this incident (Board Review 02).
- § 87(2)(b)

Civilian and Officer CCRB Histories

- § 87(2)(b)
 - § 87(2)(b)
 - § 87(2)(b)
 - § 87(2)(b)
 - § 87(2)(b)
 - § 87(2)(b)
- Police Officer McCloud has been a member of the NYPD for four years and has nine allegations in four cases with no substantiated allegations (see officer history).
 - § 87(2)(g)

Potential Issues

- § 87(2)(b) stated that he had a minor interaction with an individual prior to the officers arriving to the location. He did not provide contact information for the individual as he alleged that the individual was not present during the police interaction. Sergeant Ferrara stated that an individual remained present throughout the interaction. Since § 87(2)(b) did not provide any contact information for the individual the investigation was unable to obtain a statement from the individual regarding the incident.

Findings and Recommendations

Explanation of Subject Officer Identification

- Police Officer McCloud acknowledged that he was the primary contact officer and the officer who interacted with § 87(2)(b) while at the stationhouse. Therefore, Allegations A and B are pleaded against him.

Allegations not pleaded

- **Frisk and Search:** Although § 87(2)(b) alleged that he was frisked and searched prior to being placed in handcuffs it is undisputed that § 87(2)(b) did not have photo identification at the time of the incident. Had § 87(2)(b) provided identification he could have been issued a summons in lieu of an arrest for littering – an arrestable offense. The investigation determined that the frisk and search of § 87(2)(b) were done incident to a lawful arrest. Therefore, frisk and search allegations are not pleaded.

Allegation A – Abuse of Authority: At Union Avenue and East 156th Street, Police Officer Malik McCloud stopped § 87(2)(b)

It is undisputed that Police Officer McCloud stopped § 87(2)(b) and that § 87(2)(b) littered.

On December 9, 2016, § 87(2)(b) provided a phone statement (Board Review 05) and was interviewed at the CCRB on December 12, 2016 (Board Review 06). § 87(2)(b) went to Fairmont Deli and Minimart located on the northwest corner of Union Avenue and East 156th Street in the Bronx. Upon exiting the deli, § 87(2)(b) recognized an individual whom he owed two dollars to walking across the street on the southbound corner of Union Avenue and East 156th Street. § 87(2)(b) took out two dollars and signaled to the individual. The individual continued walking away and entered into the building located at 729 Union Avenue. § 87(2)(b) walked to the building and stood outside of the black steel gate in front of the building (Board Review 07). He screamed at the individual and showed him the two dollars. The individual told § 87(2)(b) he would be right out to speak with him and entered into the building. § 87(2)(b) held onto the money while placing his hand through a gap in the steel gate but his hand accidentally hit the gate causing the money to fall onto the ground on the side of the building. He proceeded to walk away from the building southbound on Union Avenue. As § 87(2)(b) was about to cross the street a marked police vehicle stopped in front of him. Four officers exited the vehicle and surrounded him. Police Officer McCloud asked § 87(2)(b) what he had thrown over the gate. § 87(2)(b) responded that his two dollars had fallen from his hand onto the ground.

On January 6, 2017, Police Officer McCloud was interviewed at the CCRB (Board Review 08). On January 18, 2017, Police Officer Randy Henriquez of the 40th Precinct was

interviewed at the CCRB (Board Review 09). On January 19, 2017, Police Officer Michael Nesto of the 40th Precinct was interviewed at the CCRB (Board Review 10). On January 20, 2017, Sergeant John Ferrara of the 40th Precinct was interviewed at the CCRB (Board Review 11). All officers interviewed for this incident provided similar testimony. Officers corroborated that as the police vehicle was approaching the incident location, § 87(2)(b) was observed tossing an object over the steel gate and onto the ground. § 87(2)(b) made no attempts to retrieve the object prior to leaving the location. Officers then exited the police vehicle in order to approach § 87(2)(b) and issue him a summons for littering.

New York City Administrative Code Section § 16-118 states that no person shall litter, sweep, throw, or cast any ashes, garbage, paper, dust or other rubbish of any kind whatsoever, in or upon any street or public place, vacant lot, air shaft, areaway, backyard court or alley (Board Review 12).

In this case, all four officers interviewed testified that § 87(2)(b) had thrown an object over the gate which landed on the other side of the building, a shared public space among the building tenants. § 87(2)(b) acknowledged to have thrown an object, which turned out to be money, over the gate with no intention of retrieving it since he walked away from the building.

§ 87(2)(b), § 87(2)(g)

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Allegation B – Abuse of Authority: At the 40th Precinct stationhouse, Police Officer Malik McCloud strip-searched § 87(2)(b)

§ 87(2)(b), § 87(2)(g) stated that while at the 40th Precinct stationhouse, Police Officer McCloud took him to the bathroom where he was instructed to take off his sweatpants (Board review 06). § 87(2)(b) handed his sweatpants to Police Officer McCloud who turned them inside out. He took off the string and handed the sweatpants back to § 87(2)(b).

Police Officer McCloud stated that he brought § 87(2)(b) into the bathroom following proper protocol to ensure detainees do not have any loose strings on their clothing which could cause harm to themselves or an officer (Board Review 08). § 87(2)(b) removed his shoelaces and possibly a belt. Police Officer McCloud did not instruct § 87(2)(b) to take off his sweatpants throughout the interaction.

Sergeant Ferrara stated that officers under his supervision are required to take a detainee into the bathroom located in the muster room for privacy issues so that the person may remove any loose strings, shoelaces, and anything that can cause harm to a person (Board Review 11). On a case by case basis, a person may be asked to remove their clothing. In § 87(2)(b)'s case, he was not instructed to remove his clothing. Police Officer McCloud did not strip-search § 87(2)(b) since he would have needed Sergeant Ferrara's permission to do so which Sergeant Ferrara did not provide.

In this case, although § 87(2)(b) alleged that Police Officer McCloud instructed him to remove his sweatpants, Police Officer McCloud denied doing so. The 40th Precinct Command Log had no entries related to § 87(2)(b)'s arrest indicating that a strip-search had occurred (Board Review 13). Police Officer McCloud had no entries in his memo book indicating that he had strip-searched § 87(2)(b) (Board Review 14). § 87(2)(b) was arrested and charged

with possession of a controlled substance after he was found to be in possession of three glassine bags of crack cocaine in his sweatpants pocket while on scene. § 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Squad: 6

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date